IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38635 of 2019

Arising Out of PS. Case No.-176 Year-2016 Thana- AIRPORT District- Patna

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Nilesh Kumar Singh @ Nilesh Kumar S/o Krishna Murari Singh R/o Prashya Sadan, Riding Road, P.S.- Hawai Adda, District- Patna

... ... Petitioner

Versus

1. The State of Bihar
2. Pankaj Kumar Singh S/O Shri Raj Kishore Singh R/O Sanjay Gandhi Nagar, Road NO-6, Hanuman Nagar, P.S.- Patrakar Nagar, District- Patna

... ... Opposite Party/s

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Section 482 CrPC---Quashing---Scope and ambit---Indian Penal Code---section 304(B)---Indian Evidence Act---section 113(B)----petition to quash impugned order whereby and whereunder discharge petition filed by husband/Petitioner was dismissed and charge was framed u/s 304(B) IPC---allegation against Petitioner is that after two months of the marriage the petitioner and his family members started torturing the deceased on account of non-fulfilment of their dowry demand and such torturing continued resulting into her death---argument on behalf of Petitioner that there was no demand of dowry, nor was any torturing for dowry, much less there was any torturing soon before her death and that the deceased died natural death during course of treatment.

*Held: at the stage of framing charge, the Court is required to conduct a mini trial and is required to consider the material on record only with a view to find out if there is a ground for presuming that accused had committed the offence, and not to see whether prosecution has made out a case for conviction of the accused---As per the inquest report, there was injury on the chest besides bleeding from mouth and nose and spot of blood on shoulder---As per the postmortem report, there is ante mortem fracture of sternum at third rib label caused by hard and blunt substance and cause of death is on account of haemorrhage due to injury---Rigor mortis was also found to be present all over the body---there was demand of dowry in the form of opening of medical company for the Petitioner-Husband and on account of non-fulfilment of the same the victim/wife of the Petitioner was subjected to torturing since after two months of the marriage and such torturing continued resulting into her death---Admission and treatment of the victim at Hospital was stage-managed to show that she had died at hospital in course of treatment----sufficient material on record to frame charge against the petitioner under Section 304 B of IPC---no illegality or infirmity in the impugned order---petition dismissed. (**Para 1, 39, 47-51**)*

(1988) 1 SCC 692, 1992 Suppl (1) SCC 335, (2005) 13 SCC 540, (1977) 4 SCC 39, (1979) 3 SCC 4, (1996) 4 SCC 659, (2000) 6 SCC 338, (2000) 8

SCC 547, (2005) 1 SCC 568, (2007) 5 SCC 403, (2008) 2 SCC 561, (2010) 2 SCC 398, (2010) 9 SCC 368, (2012) 9 SCC 460, (2014) 11 SCC 709, (2019)7 SCC 515, (2019) 16 SCC 547, 2021 SCC OnLine SC 1222, (2021) 8 SCC 583, (2022) 12 SCC 657, 2023 SCC OnLine SC 379, (2023) 6 SCC 768, 2023 SCC Online SC 1369, (2011) 11 SCC 359, (2015) 3 SCC 724, (2017) 1 SCC 101

……***Relied Upon***.

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Appearance :

For the Petitioner/s	:	Mr. Naresh Dixit, Advocate Mr. Binod Kumar Mishra, Advocate Mr. Sanjay Pandey, Advocate
For the State	:	Mr. Nirmal Kumar Sinha, APP
For the Informant	:	Mr. Shubesh Pandey, Advocate Mr. Amit Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 10.04.2024

The present petition has been filed on behalf of the Petitioner under Section 482 of Cr.PC for quashing the impugned order dated 29.03.2019 passed by Additional Sessions Judge-II, Patna in Sessions Trial No. 467/2018 arising out of Hawai Adda P.S. Case No. 176/2016 registered for offence punishable under Section 304(B) read with Section 34 of the Indian Penal Code against the husband/Petitioner Nilesh Kumar Singh, brother-in-law Ratnesh Kumar and wife of Ratnesh Kumar. By the impugned order, Ld. Trial Court has rejected the petition of the Accused/Petitioner Nilesh Kumar Singh filed

under Section 227 of Cr.PC for discharge finding sufficient material on record to frame charge under Section 304(B) of Indian Penal Code.

2. The prosecution case as emerging from the First Information Report is that the deceased, Rani Devi, daughter of informant, Sri Pankaj Kumar Singh, was married with the petitioner, Nilesh Kumar Singh @ Nilesh Kumar son of Krishna Murari Singh about three years back. About after two months of the marriage, the petitioner/husband, his brother, Ratnesh Kumar son of Late Shyam Bihari Singh and wife of Ratnesh Kumar started torturing the deceased stating that she should ask her father to open a medical company for the petitioner, failing which, she would not be allowed to live in her matrimonial home. The informant was called by the petitioner and his brother, Ratnesh Kumar to their home to be asked to open a medical company for him. However, the informant expressed his inability to open such a company saying that too much money has already been spent on the marriage of his daughter. Thereafter, all the accused persons stopped talking with the deceased and started torturing her for dowry and exerted pressure upon him to open a medical company. Then in the month of September 2015, the petitioner who is son-in-law

of the informant called him at his home by phone through his friend, namely, Manish and again asked him to open medical company for him and also demanded his house, upon which, the informant told him that the house is in the name of three brothers and he is unable to give this house to him. On such statement, all the accused got angry. On 31.10.2016 at about 4:20 AM, a phone call came from Ratnesh Kumar, brother of son-in-law, giving information that his daughter is ill and admitted in PARAS Hospital. However, when the informant wanted to know about the illness, he was informed that there was a serious heart attack. When the informant reached PARAS Hospital, he found his daughter, Rani Devi already dead. He has claimed that the death of his daughter is unnatural. The *Fardbeyan* was given at 7:30 AM at PARAS HMRI Hospital, Patna.

3. After investigation, the police submitted charge-sheet on 28.01.2017 bearing charge sheet No. 04/2017 for offence punishable under Section 304(B)/34 of the IPC. As per record, supplementary charge-sheet bearing charge-sheet No. 168/2017 dated 15.12.2017 was also submitted against two co-accused, Ratnesh Kumar, son of Late Shyam Bihari Singh and wife of Ratnesh Kumar for offence punishable under Sections

304(B)/302/34 of the Indian Penal Code.

4. In course of trial, the petitioner moved an application under Section 227 of the Cr.PC before the trial court for his discharge. However, Ld. trial court vide its order dated 29.03.2019 rejected the aforesaid application against which the petitioner has preferred the present petition under Section 482 Cr.PC for setting aside/quashing the impugned order dated 29.03.2019.

5. Heard Ld. counsel for the petitioner, Ld. counsel for the informant and Ld. APP for the State.

6. Ld. Counsel for the petitioner submits that the deceased, Rani Devi was an educated lady having degree of M.Sc and she was an outgoing lady, though she was not in job. However, there is no complaint on her part against her husband or against any of her in-laws ever. He also submits that there is no allegation of any demand of dowry or torture soon before the death which is one of the essential ingredients of Section 304(B) of the Indian Penal Code. Therefore, offence under Section 304(B) of the Indian Penal Code is not made out against the petitioner. He further submits that even going by the FIR, the last call for opening a medical company for the petitioner was received way back in the month of September, 2015 by the

informant i.e., much before death in the month of October of 2016. He further submits that the deceased was never tortured by the petitioner and on her complaint of chest pain and vomiting, she was admitted to the best hospital available at Patna i.e., PARAS HMRI Hospital, where in course of treatment, she was subjected to cardiopulmonary resuscitation (CPR) for about 45 minutes in course of which there is every possibility of fracture of chest ribs. Hence, she died natural death on account of illness she was suffering from.

7. He further refers to report of PARAS Hospital which is a part of the case diary. He points out that there is no injury on the person of the deceased as per the report. He further submits that as per the medical report of PARAS HMRI Hospital, Patna, there is no physical injury on the person of the deceased. Even postmortem report does not mention any external injury on the person of the deceased. He further submits that the fracture of sternum at 3rd rib label was on account of CPR given by PARAS Hospital in course of the treatment. He has also annexed a copy of medical article on CPR in which it has been mentioned that Dr. Michael Sayre, a spokesperson for the American Heart Association and a professor at the University of Washington in Seattle, said broken

ribs are to be expected when doing CPR and the worry of causing a break shouldn't deter people from helping someone in cardiac arrest. He also submits referring to the same article, that women come under high risk groups to suffer fracture of ribs during CPR.

8. Referring to viscera report, learned counsel for the petitioner submits that even viscera report does not suggest any culpability of the petitioner or any of the accused persons because as per viscera report no metalic, alkaloidal, glycosidal, pesticidal and volatile poison could be detected in the contents of glass jar.

9. Ld. Counsel further submits that one of the essential ingredients, amongst others, is that the woman must have been, soon before her death, subjected to cruelty or harassment for, or in connection with, any demand for dowry. This ingredient is missing in the whole case against the petitioner. He further submits that, as per the allegation, there is no demand of dowry and torturing soon before death, because last call for opening a medical company was made in September, 2015 i.e., much prior to the death of the alleged victim on 30.12.2016 and there is no allegation of torturing soon before her death. There is no allegation that she was

administered any poisonous substance or subjected to any physical assault causing external injury. He also submits that prerequisites for framing of charge are not fulfilled.

10. Ld. APP for the State and Ld. Counsel for the informant submit that the *Fardbeyan* as well as material collected by police during investigation clearly manifest that there was demand for opening a medical company for the petitioner and on account of non fulfillment of the same, the victim was continuously subjected to torture. He also submits, referring to the inquest report that there was injury on the person of the deceased, like bleeding from mouth and nose, spot of blood on shoulder, mark of injury on chest. He further submits that the deceased as per version of the petitioner/accused himself as emerging from para-12 of the case diary, there was complaint of stomach pain. However, it has been wrongly mentioned in the medical report that there was complaint of vomiting. He further submits that in case of stomach pain or vomiting there is no occasion for any CPR. It is also submitted that as per postmortem report, postmortem commenced at 11:00 AM and rigor mortis was present all over the body at the time of examination. He further submits that average duration of onset of rigor mortis is about eight hours and rigor mortis develops in

full body in about eighteen hours. He further points out that as per the report of PARAS Hospital, she was brought to the Hospital at 4:10 AM in gasping condition and there was no carotid pulse palpable and she was declared dead at 4:55 AM. But, he submits that in view of the rigor mortis at 11:00 AM when postmortem was conducted, she must have died much prior to her bringing to PARAS Hospital at 4:10 AM. He claims that, in fact, the victim was already dead at home and the whole treatment at PARAS was stage-managed to show that she has died at hospital in course of treatment. He points out that as per the postmortem report death is due to hemorrhage caused by ante mortem injury caused by hard and blunt substance.

11. He further submits that all the ingredients of Section 304(B) IPC are present as per material on record. At the time of framing of charges, only *prima facie* case is to be seen; proof of the alleged offence beyond reasonable doubt, is not to be seen at this stage. He also submits that at the stage of framing of charge, there is limited scope to weigh the probative value of the material on record. A mini trial cannot be conducted at the stage of framing of charge.

12. Before I proceed to consider the rival submissions of the parties on merits, it would be pertinent to see the scope

and ambit of Section 482 of the Cr.PC.

13. Section 482 Cr.PC saves inherent power of High Court and it reads as follows:-

> "482. **Saving of inherent powers of High Court.**- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

14. In **Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, [(1988) 1 SCC 692],** Hon'ble three-Judge Bench of Supreme Court has laid down the law as to quashment of proceedings under Section 482 Cr.PC as follows :

> "7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

15. Hon'ble Supreme Court in **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, delivered the land mark judgment on the scope and extent of the jurisdiction of

High Court under Section 482 Cr.PC It is still holding the field and being consistently followed and relied upon by all Courts including the Apex Court.

16. Hon'ble Apex Court in **Bhajan Lal case (supra)** held as follows:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or

complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

17. Hon'ble Supreme Court in **State of Orissa Vs. Saroj Kumar Sahoo, (2005) 13 SCC 540** explaining the ambit and scope of Section 482 Cr.PC observed as follows:

"8. ……. While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the

court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto."

18. Now let us refer to what Hon'ble Apex Court has observed from time to time in regard to application of Section 482 Cr.PC at the stage of framing of charge.

19. In the case of **State of Bihar Vs. Ramesh Singh, (1977) 4 SCC 39, Hon'ble Supreme Court** held as follows:-

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— …

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of

the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. …….. ”

(Emphasis supplied)

20. Hon’ble Supreme Court in the case of **Union of India Vs. Prafulla Kumar Samal, (1979) 3 SCC 4**, has held as follows:

“7……The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

……

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of

framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

(Emphasis supplied)

21. Hon'ble Supreme Court, in the case of **State of Maharashtra Vs. Som Nath Thapa, (1996) 4 SCC 659,** has held as follows :-

"32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

22. Hon'ble Supreme court in the case of **State of M.P. Vs. Mohanlal Soni, (2000) 6 SCC 338,** has held as follows :

> "7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

23. Hon'ble Supreme court in the case of **K. Ramakrishna Vs. State of Bihar, (2000) 8 SCC 547,** has held as follows:-

> "4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in **Rajesh Bajaj v. State NCT of Delhi (1999) 3 SCC 259,** the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage"
>
> (Emphasis supplied)

24. Hon'ble Supreme court in the case of **State of Orissa Vs. Debendra Nath Padhi, (2005) 1 SCC 568,** has held as follows:

> "8. What is the meaning of the expression "the record

of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. …….. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

……

16. ……This aspect, however, has been adverted to in **State Anti-Corruption Bureau v. P. Suryaprakasam [1999 SCC (Cri) 373]** where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. (emphasis supplied) The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same — whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code."

25. Hon'ble Supreme Court in the case of **Soma Chakravarty Vs. State, (2007) 5 SCC 403,** has held as follows:

"10. It may be mentioned that the **settled legal position**, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by

the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

(Emphasis supplied)

26. Hon'ble Supreme court in the case of **Onkar Nath Mishra Vs. State (NCT of Delhi), (2008) 2 SCC 561,** has held as follows:-

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

(Emphasis supplied)

27. Hon'ble Supreme Court in the case of **P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398,** has held as follows:

"11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

12. …..This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial

stage, yet it may be sufficient for the satisfaction of the trial Judge in order to frame a charge against the accused."

(Emphasis supplied)

28. In **Sajjan Kumar Vs. CBI, (2010) 9 SCC 368**,

Hon'ble Supreme Court has observed as follows:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this

limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

(Emphasis supplied)

29. In the case of **Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 Hon'ble Supreme Court** held as follows:-

"19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage…….

……

27. ……..... At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied

then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section

228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist…...

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

(Emphasis supplied)

30. Hon'ble Supreme Court in the case of **State of T.N. Vs. N. Suresh Rajan, (2014) 11 SCC 709,** has held as follows:

"29. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be

considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

(Emphasis supplied)

31. In **State of Karnataka Vs. M.R. Hiremath, (2019)7 SCC 515**, **Hon'ble Supreme Court** has observed as follows:

"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. ....."

(Emphasis supplied)

32. In **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat, (2019) 16 SCC 547]**, **Hon'ble Supreme Court** has observed as follows:

" 23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the

prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

(Emphasis supplied)

33. Hon'ble Supreme Court in the case of **State of Odisha Vs. Pratima Mohanty, 2021 SCC OnLine SC 1222,** has held as follows:

"16......At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducing the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.

.....

18. Therefore, considering the aforesaid it cannot be said that the criminal proceedings against the respondents - accused were in any way an abuse of process of law and/or the Court....."

(Emphasis supplied)

34. Hon'ble Supreme Court in the case of **Saranya v. Bharathi, (2021) 8 SCC 583**, has held as follows:

"11. ……..it is observed and held that at the stage of

framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not."

(Emphasis supplied)

35. In **Ghulam Hassan Beigh Vs. Mohd. Maqbool Magrey, (2022) 12 SCC 657, Hon'ble Supreme Court** has observed as follows:

"27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge-sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. ....."

(Emphasis supplied)

36. Hon'ble Supreme Court in the case of **CBI Vs.**

Aryan Singh, 2023 SCC OnLine SC 379, has held as follows:

> "10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".
>
> (Emphasis supplied)

37. Hon'ble Supreme court in the case of **State of T.N. Vs. R. Soundirarasu, (2023) 6 SCC 768,** has held as follows:

> "69. The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words "a very strong suspicion" used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting

the offence alleged.

.....

84. In the overall view of the matter, we are convinced that the impugned orders passed by the High Court are not sustainable in law and deserve to be set aside. The circumstances emerging from the record of the case, prima facie, indicate the involvement of the accused persons in the alleged offence. Having regard to the materials on record, it cannot be said that the charge against the accused persons is groundless. There are triable issues in the matter. If there are triable issues, the court is not expected to go into the veracity of the rival versions."

(Emphasis supplied)

38. From the aforesaid discussions of law, it clearly emerges that the power of this Court under Section 482 Cr.PC, for quashing the criminal proceedings, particularly, the charge framed in course of trial is required to be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. The Court can interfere only if the allegations are found to be so patently absurd and inherently improbable that no prudent person can believe such an allegation or where the basic ingredients of a criminal offence are not satisfied as per the material on record.

39. It also emerges that at the stage of framing charge, the Court is required to conduct a mini trial. It is required to

consider the material on record only with a view to find out if there is a ground for presuming that accused had committed the offence, and not to see whether prosecution has made out a case for conviction of the accused. At this stage, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. The truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously examined. Nor is any weight to be attached to the probable defence of the accused. The court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. Even strong suspicion based on material on record is sufficient to frame charge.

40. Now coming to the case on hand, the question for this Court to consider is whether there is sufficient material on record to frame charge against the Petitioner under Section 304B of the Indian Penal Code.

41. Before I proceed, it would be pertinent to refer to Section 304B of the Indian Penal Code which reads as follows:

> **"304B. Dowry death.—** (1) Where the death of a woman is caused by any burns or bodily injury or occurs

> otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
>
> **Explanation.**—For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

42. The ingredients of Section 304B of the Indian Penal Code as pointed by Hon'ble Supreme Court in **Paranagouda & Anr Vs. State of Karnataka & Anr, 2023 SCC Online SC 1369**, are as follows:

> **" 20.** ……...
>
> (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
>
> (ii) Such a death should have occurred within seven years of her marriage.
>
> (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
>
> (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
>
> (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death."

43. **Hon'ble Supreme Court** in **Bansilal Vs. State of Haryana, (2011) 11 SCC 359,** has held that, to attract the provision of Section 304B of the IPC, one of the main ingredients of the offence which is required to be established is

that “soon before her death”, she was subjected to cruelty and harassment “in connection with the demand of dowry”. It has been also held that the expression “soon before her death” has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.

44. In regard to import of the **word “Soon”** used in Section 304 B IPC, **Hon’ble Supreme Court** in **Sher Singh Alias Partapa Vs. State of Haryana, (2015) 3 SCC 724,** has held as follows:

> “16**.** ……..We are aware that the word “soon” finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. ……..”

45. It would would be also relevant to refer to **Section 113B of the Indian Evidence Act** which deals with presumption as to the dowry death. It reads as follows:

> **“113 B. Presumption as to dowry death.—** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such

person had caused the dowry death.

Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of Penal Code, 1860 (45 of 1860)"

46. In regard to Section 304 B of IPC and Section 113 B of the Evidence Act, **Hon'ble Supreme Court** in **Baijnath Vs. State of M.P., (2017) 1 SCC 101,** has also held as follows:

"29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. .....

.....

32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in

connection with the demand for dowry".

47. Coming back to the case on hand, I find that deceased Rani Devi was married with the Accused-Petitioner Nilesh Kumar Singh @ Nilesh Kumar about three years back and as per the allegation, after two months of the marriage, the petitioner and his brother Ratnesh Kumar and wife of Ratnesh Kumar started torturing the deceased on account of non-fulfilment of their demand to open a medical company by the father of the deceased for the Petitioner. However, the father of the deceased, who is informant herein kept expressing his incapability to open such a company. On 31st October, 2016 at about 4:20 AM, the informant was informed by Accused-Petitioner that his daughter was ill and admitted in PARAS Hospital on account of serious heart attack. When the informant reached PARAS Hospital, his daughter Rani Devi was found to be already dead. As per the inquest report, there was injury on the chest besides bleeding from mouth and nose and spot of blood on shoulder. As per the postmortem report, amongst other things, there is ante mortem fracture of sternum at third rib label caused by hard and blunt substance and cause of death is on account of haemorrhage due to injury ante mortem injury. Rigor mortis was also found to be present all over the body. As per the postmortem report, postmortem had commenced at 11 AM on

31.10.2016.

48. As per Ld. Counsel for the Petitioner, there was no demand of dowry, nor was any torturing for dowry, much less there was any torturing soon before her death. It is on account of chest pain and vomiting, she was admitted to the Paras Hospital at about 4:10 AM on 31.10.2016, where in course of treatment, she was subjected to cardiopulmonary resuscitation (CPR) for about 45 minutes, in course of which chest ribs were fractured. Hence, she died natural death and no offence of dowry death has been committed by the Petitioner.

49. However, Ld. APP for the State and Ld. Counsel for the Informant vehemently submit that there was demand of dowry in the form of opening of medical company for the Petitioner-Husband and on account of non-fulfilment of the same the victim/wife of the Petitioner was subjected to torturing since after two months of the marriage and such torturing continued resulting into her death. As such, all the ingredients of Section 304B of the Indian Penal Code read with Section 113B of the Indian Evidence Act are present and there is no illegality or infirmity in the impugned order, whereby discharge petition filed by the Petitioner has been rejected by Ld. Trial Court finding that there are sufficient material to frame charge under

Section 304(B).

50. To substantiate their claim, Ld. APP for the State and Ld. Counsel for the Informant point out that initially the Informant-Father of the deceased, was informed that his daughter was admitted to Paras Hospital on account of heart attack, whereas during course of investigation, the accused have stated to the police that she was making a complaint of stomach pain and vomiting. In both situations, there was no occasion for any CPR and there was no reason for fracture of the ribs. They also point out that at the time of commencement of the postmortem, rigor mortis was present all over the body which means that the victim was dead prior to her admission in the Paras Hospital at 4:10 AM on 31.10.2016, because and at 11:00 AM on the same day when postmortem commenced, rigor mortis was found to be present all over the body of the victim and as per Medical Science, rigor mortis develops in full body in about 18 hours, which shows that she must have died much earlier to her bringing to Paras Hospital. Admission and treatment of the victim at Paras Hospital was stage - managed to show that she had died at hospital in course of treatment.

51. Considering the aforesaid facts and circumstances, there is no hesitation to hold that there is sufficient material on

record to frame charge against the petitioner under Section 304 B of IPC. Hence, there is no illegality or infirmity in the impugned order, nor is any abuse of the process of Court or miscarriage of justice.

52. The present petition is dismissed, accordingly, upholding the impugned order.

(Jitendra Kumar, J.)

chandan/ravisha
nkar/shoaib

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